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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,488	04/22/2005	Bryan Salt	6257-31902	2505
35690 7590 11/16/2011 MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
EXAMINER MIRZA, ADNAN M				
ART UNIT 2443		PAPER NUMBER		
NOTIFICATION DATE 11/16/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/501,488

Applicant(s)

SALT, BRYAN

Examiner

ADNAN MIRZA

Art Unit

2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-55 and 118-137 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-55 and 118-137 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-845)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 09/08/2011
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The instant application 10501488 has a total of 22 claims pending in the application; there are 3 independent claims and 19 dependent claims, all of which are ready for examination by the examiner. This office action is in response to the applicant's claims filing date 09/08/2011.
2. Examiner objected to claim 53 as allowable if incorporated in all the independent claims.

Claim Rejections - 35 USC § 101

2. Claim(s) 118-126,137 rejected under 35 USC 101 since the claims are directed to non-statutory subject matter. Claim 118 recite an article of manufacture including a computer readable medium in the claim which appear to cover both transitory and non-transitory embodiments. The United States Patent and Trademark Office (USPTO) is required to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and

transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim **must** be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52-55, 118-137 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffberg et al (U.S. 6,400,996) and further in view of Puller et al (U.S. 2002/0091840).

As per claims 52, 118, 127, 134-137 Hoffberg disclosed a method comprising: a server storing an image element, wherein the image element is usable to perform an image reconstruction process to generate an image, wherein the image reconstruction process includes a plurality of operations; the server identifying a communication parameter

associated with a client; of the server identifying a processing parameter of the client (col. 65, lines 63-67 & col. 66, lines 1-16); the server receiving a request to provide the image to the client; the server selection a set of the plurality of operations based at least in part on the processing parameter and the communication parameter; for each element to meet the task requirement the server performing the set of the plurality of operations to generate a processed image element, wherein the performing uses the stored image element (col. 66, lines 62-67 & col. 67, lines 1-8).

However Hoffberg did not disclose in detail the server sending the processed image element to the client, wherein the client is configured to perform remaining ones of the plurality of operations using the processed image element to display the image.

In the same field of endeavor Pulier disclosed the MPH sniffer module is a client-side application that is triggered at step 106 by user access of the streaming media web page. It calculates the current bandwidth from the client machine to the web page server, checks to see whether the client has the necessary components required to experience the streaming media etc. The information gathered by the sniffer module gives the MPH process an initial of where to start in the provider selection process. Processing continues non FIG. 3 as shown by the continuation indicator 108 (Page. 2, Paragraph. 0017).

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have incorporated the MPH sniffer module is a client-side application that is triggered at step 106 by user access of the streaming media web page. It calculates the current bandwidth from the client machine to the web page server, checks to see whether the client has the necessary components required to experience the streaming media etc. The information gathered by the sniffer module gives the MPH process an initial of where to start in the provider selection process. Processing continues non FIG. 3 as shown by the continuation indicator 108 as taught by Pulier in the method and system of Hoffberg to reduce latency and optimizing communication between the client and the server.

5. As per claim 54 Hoffberg -Pulier disclosed wherein at least one of the first processed image elements is a larger file size than the corresponding at least one of the second processed image elements (Pulier, Page. 1, Paragraph. 0013).

6. As per claim 55 Hoffberg -Pulier disclosed wherein said selection is performed to reduce rendering time for the image by the client task (Pulier, Page. 2, Paragraph. 0022).

7. As per claims 119,128,131 Hoffberg -Pulier disclosed the operations further comprising: storing a set of image processing instructions at the computer system; and transmitting the set of image processing instructions to the client, wherein the client is configured to execute the set of image processing instructions using the partially processed version of the image to display the image (Hoffberg, col. 66, lines 62-67 & col. 67, lines 1-8).

8. As per claims 120,129 Hoffberg -Pulier disclosed wherein the at least one characteristic includes a processing speed of the client and a bandwidth of a communication channel available to the client, and wherein said determining comprises: identifying the processing speed; identifying the bandwidth; and selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth (Pulier, Page. 1, Paragraph. 0013).

9. As per claims 121,130 Hoffberg -Pulier disclosed wherein said selecting minimizes a time between the computer system performing said transmitting and the client displaying the image (Hoffberg, col. 76, lines 4-23).

10. As per claim 122 Hoffberg -Pulier disclosed the operations further comprising: selecting a second portion of the plurality of tasks to be performed by the client (Hoffberg, col. 76, lines 42-65).

11. As per claims 123,132 Hoffberg -Pulier disclosed wherein the selecting the first portion of the plurality of tasks includes determining that the bandwidth is above a threshold (Pulier, Page. 2, Paragraph. 0020).

12. As per claim 124 Hoffberg -Pulier disclosed wherein the selecting the first portion of the plurality of tasks includes determining that the bandwidth is below a threshold (Pulier, Page. 2, Paragraph. 0020).

13. As per claims 125,133 Hoffberg -Pulier disclosed wherein the selecting the first portion of the plurality of tasks includes determining that the processing speed of the client is below a threshold (Pulier, Page. 2, Paragraph. 0019).

14. As per claim 126 Hoffberg -Pulier disclosed wherein the selecting the first portion of the plurality of tasks includes determining that the processing speed of the client is above a threshold (Pulier, Page. 2, Paragraph. 0019).

15. **Examiner's notes:** Examiner has cited particular columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are

applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Response to Arguments

Applicant's arguments filed 09/08/2011 have been fully considered but they are not persuasive. Response to applicant's argument is as follows.

A. Applicant argued that prior art did not disclose, "server sending the processed image element to the client wherein the client is configured to perform remaining ones of the plurality of operation using the processed image element to display the image".

As to applicant's argument, Pulier disclosed the MPH sniffer module is a client-side application that is triggered at step 106 by user access of the streaming media web page. It calculates the current bandwidth from the client machine to the web page server, checks to see whether the client has the necessary components required to experience the streaming media etc. The information gathered by the sniffer module

gives the MPH process an initial of where to start in the provider selection process. Processing continues non FIG. 3 as shown by the continuation indicator 108 (Page. 2, Paragraph. 0017).

B. Applicant argued that prior art did not disclose, "Selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter".

As to applicant's argument Hoflberg disclosed, "The interface receives the data and formats it based, at least in part, on parameters specific to the client or user. Thus, the presentation is adaptive to server parameters, user parameters and the data itself (col. 51, lines 46-64).

C. Applicant argued that prior art did not disclose, streaming media includes a partially processed version of an image".

As to applicant's argument Pulier disclosed, "The MPH system 30 is activated when a web page 40 requiring media delivery is executed" (Page. 1, Paragraph. 0012). The MPH system in Pulier includes a sniffer module 44, statistics module, statistics collector module, a metrics calculator module. As to above Pulier did disclose partially processed

version of an image. Examiner interpreted the version of the image as image or content based on the selective parameters.

Conclusion

17. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

18. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571)-272-4170. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

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Art Unit: 2443

/ADNAN MIRZA/

Primary Examiner, Art Unit 2443